

Civil Revision No. 87 of 2016 (O&M)

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**Civil Revision No. 87 of 2016 (O&M)
Date of decision: 30.1.2017**

Narender Nath Puri

... Petitioner

Vs.

Satish Kumar Kapil and another

... Respondents

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. R.Kartikeya, Advocate
for the petitioner.

RAMESHWAR SINGH MALIK, J. (Oral)

Present revision petition is directed against the order dated 25.9.2015 passed by learned executing court, whereby objections filed by the petitioner-judgment debtor, seeking dismissal of the execution petition of the plaintiff-decree holder, on the ground of alleged late deposit of the balance sale consideration, were dismissed.

Facts of the case are hardly in dispute. Petitioner intended to sell the suit property and for the said purpose, he entered into an agreement to sell with the plaintiff-respondent No.1. When the petitioner did not get the sale deed registered, plaintiff filed a suit for possession by way of specific performance of the agreement to sell. Suit of the plaintiff was decreed and first appeal filed by the defendant-petitioner was dismissed. The plaintiff-decree holder filed his execution petition, however, decree was still not final,

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as the defendant-judgment debtor filed his regular second appeal before this Court.

During the pendency of regular second appeal before this Court at the hands of the petitioner, execution petition of the plaintiff-decree holder remained pending before learned executing court. Regular second appeal of the defendant-petitioner was also dismissed by this Court vide order dated 25.8.2008. Thereafter, petitioner approached the Hon'ble Supreme court by way of SLP (C) No. 29227 of 2008, which was dismissed vide order dated 15.12.2008, thus, decree passed by learned trial court attained finality against the petitioner.

After the abovesaid order passed by the Hon'ble Supreme Court, petitioner made another effort to defeat the decree, by filing objection petition dated 16.5.2009 (Annexure P-1) before learned executing court, trying to invoke the provisions of Section 28 of the Specific Relief Act, 1963, ('the Act' for short). The objection petition filed by the petitioner came to be dismissed by way of impugned order. Hence this revision petition at the hands of unsuccessful defendant-judgment debtor.

Learned counsel for the petitioner, while placing reliance on the judgments of the Hon'ble Supreme Court in **N.P.Thirugnanam (Dead) By Lrs Vs. Dr. R.Jagan Mohan Rao and others, (1995) 5 SCC 115, V.S.Palanichamy Chettiar Firm Vs. C. Alagappan and another, (1999) 4 SCC 702, Chanda (Dead) through Lrs VS. Rattni and another, (2007) 14 SCC 26 and Bhupinder Kumar Vs. Angrej Singh, (2009) 8 SCC 766,** submits that once plaintiff-decree holder failed to deposit the requisite amount in terms of the directions issued by the learned first appellate court vide judgment and decree dated 30.10.2003, the execution petition filed by

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the decree holder ought to have been dismissed. However, since learned executing court failed to appreciate true facts as well as settled proposition of law in this regard, the impugned order has resulted in miscarriage of justice. He prays for setting aside the impugned order, by allowing the present revision petition.

Having heard learned counsel for the petitioner at considerable length, after careful perusal of record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that keeping in view the peculiar facts and circumstances of the case, noticed hereinabove, the impugned order passed by learned executing court has not been found suffering from any patent illegality or perversity and the same deserves to be upheld. Present revision petition is without any merit and the same is liable to be dismissed. To say so, reasons are more than one, which are being recorded hereinafter.

The decree dated 30.10.2003 passed by learned first appellate court, which is available at page 85 of the paper book, reads as under:-

“It is ordered that the present appeal is hereby dismissed. The defendant-appellant is directed to get the plot in dispute transferred in favour of the plaintiff-respondent on receipt of the amount of Rs. 50,000/- as was agreed to be paid to him vide the agreement Ex.P1 plus the amount which he has already paid/deposited to/with the HUDA. The transfer of the plot shall be effected in favour of the plaintiff-respondent within two months of the payment/deposit of the aforementioned amounts by the plaintiff-respondent.

As noticed hereinabove, litigation remained pending during all

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this period at the hands of the petitioner-defendant/judgment debtor. Above-said SLP filed by the petitioner was also dismissed by the Hon'ble Supreme Court on 15.12.2008. It is also not in dispute that execution petition was filed well within time and it remained pending during all this period. As argued by learned counsel for the petitioner, entire case of the judgment debtor is based on Section 28 of the Act and the same reads as under:-

28. Rescission in certain circumstances of contracts for the sale or lease of immovable property, the specific performance of which has been decreed.—

(1) Where in any suit a decree for specific performance of a contract for the sale or lease of immovable property has been made and the purchaser or lessee does not, within the period allowed by the decree or such further period as the court may allow, pay the purchase money or other sum which the court has ordered him to pay, the vendor or lessor may apply in the same suit in which the decree is made, to have the contract rescinded and on such application the court may, by order, rescind the contract either so far as regards the party in default or altogether, as the justice of the case may require.

(2) Where a contract is rescinded under sub-section (1), the court—

(a) shall direct the purchaser or the lessee, if he has obtained possession of the property under the contract, to restore such possession to the vendor or lessor, and

(b) may direct payment to the vendor or lessor of all the rents and profits which have accrued in respect of the property from the date on which possession was so obtained by the purchaser or lessee until restoration of possession to the vendor or lessor, and if the justice of the case so requires, the refund of any sum paid by the

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vendee or lessee as earnest money or deposit in connection with the contract.

(3) If the purchaser or lessee pays the purchase money or other sum which he is ordered to pay under the decree within the period referred to in sub-section (1), the court may, on application made in the same suit, award the purchaser or lessee such further relief as he may be entitled to, including in appropriate cases all or any of the following reliefs, namely:—

(a) the execution of a proper conveyance or lease by the vendor or lessor;

(b) the delivery of possession, or partition and separate possession, of the property on the execution of such conveyance or lease.

(4) No separate suit in respect of any relief which may be claimed under this section shall lie at the instance of a vendor, purchaser, lessor or lessee, as the case may be.

(5) The costs of any proceedings under this section shall be in the discretion of the court.

In the circumstances of the case, the question that falls for consideration of this Court is, whether there was any time bound direction to the decree holder to deposit the balance sale consideration within a specified time or not.

A bare perusal of the abovesaid relevant part of the decree passed by learned first appellate court would make it crystal clear that there was no such time bound direction issued to the decree holder. On the other hand, such time bound direction was issued only against the judgment debtor to the effect that after depositing of remaining amount of Rs. 50,000/- by the decree holder, judgment debtor shall transfer the plot in question in favour of decree holder within a period of two months of payment/deposit of the aforementioned amount by the plaintiff. Since the petitioner had been

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litigating up to the Hon'ble Supreme Court and it was continuation of the suit, no fault can be found with the decree holder in not depositing the remaining amount immediately after filing of the execution petition.

It is so said, because neither there was any time bound direction to the decree holder for depositing the balance sale consideration, nor any such direction was issued by learned executing court to him. It was also not the requirement of law, which might cast an obligation on the decree holder to deposit the balance amount with the executing court at the time of filing of execution petition itself, particularly when the decree had not attained finality by that time. Having said that, this Court feels no hesitation to conclude that learned executing court committed no error of law, while passing the impugned order and the same deserves to be upheld.

Coming to the judgments relied upon by learned counsel for the petitioner, there is no dispute about the observations made therein. However, on a close perusal of the cited judgments, none has been found to be of any help to the petitioner, being distinguishable on facts. It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of even one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundara Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533, Union of India Vs. Amrit Lal Manchanda and others, 2004 (3) SCC 75, State of Orissa Vs. Md. Illiyas, 2006 (1) SCC 275 and State of Rajasthan VS. Ganeshi Lal, 2008 (2) SCC 533.**

With a view to avoid repetition and also for the sake of brevity, observations made by the Hon'ble Supreme Court in para 11 and 12 of its

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later judgment in Ganeshi Lal's case (supra), reiterating its view taken in Amrit Lal Manchanda's case (supra) and Mohd. Illiyas's case (supra), which can be gainfully followed in the present case, read as under:-

11. *“12....Reliance on the decision without looking into the factual background of the case before it is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a Judge while giving a judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates; (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a Court has been decided is alone binding as a precedent. (See: State of Orissa v. Sudhansu Sekhar Misra and Ors. (AIR 1968 SC 647) and Union of India and Ors. v. Dhanwanti Devi and Ors. (1996 (6) SCC 44). A case is a precedent and binding for what it explicitly decides and no more. The words used by Judges in their judgments are not to be read as if they are words in Act of Parliament. In Quinn v. Leathem (1901) AC 495 (H.L.), Earl of Halsbury LC observed that*

every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which are found there are not intended to be exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides. Coming to the peculiar fact situation obtaining on record of the present case, it is unhesitatingly held that learned Permanent Lok Adalat discussed, considered and appreciated each and every relevant aspect of the matter, before passing the impugned award. The only endeavour made by the learned Permanent Lok Adalat was to do complete and substantial justice between the parties and this approach adopted by learned Permanent Lok Adalat has been found well justified on facts as well as in law. **Ed.** See State of Orissa Vs. Mohd. Illiyas, (2006) 1 SCC 275 at p.282, para 12.

12. 15....Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. V. Horton (1951 AC 737 at p.761), Lord

Mac Dermot observed: (All ER p. 14 C-D)

"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge."

16. In Home Office v. Dorset Yacht Co. (1970 (2) All ER 294) Lord Reid said (at All ER p.297g-h), "Lord Atkin's speech.....is not to be treated as if it was a statute definition. It will require qualification in new circumstances." Megarry, J in Shepherd Homes Ltd. V. Sandham (No.2) (1971) 1 WLR 1062 observed: (All ER p. 1274d-e) "One must not, of course, construe even a reserved judgment of Russell L.J. as if it were an Act of Parliament." And, in Herrington v. British Railways Board (1972 (2) WLR 537) Lord Morris said: (All ER p. 761c)

"There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."

17. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

15. The following words of Lord Denning in the matter of applying precedents have become locus classicus: (Abdul Kayoom v. CIT, AIR 1962 SC 680

"Each case depends on its own facts and a close similarity between one case and another is not

enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

"Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it
Ed. See Union of India VS. Amrit Lal Manchanda,
(2004) 3 SCC 75, pp. 83-84, paras 15-18."

Rules of procedure are meant for advancing the cause of justice and not for defeating the genuine claim of any litigant. Petitioner, who is an unsuccessful defendant right from learned trial court up to the Hon'ble Supreme Court, is trying to take undue benefit of his own wrong, which is not permissible in law.

So far as scope and ambit of Section 28 of the Act is concerned, it fell for consideration of the Hon'ble Supreme Court in **Ramankutty Gupta Vs. Avara, 1994 (1) RRR 7111** and the law laid down by the Hon'ble Supreme Court in Avara's case (supra), has been rightly followed by learned executing court, while passing the impugned order. Relevant observation made by the Hon'ble Supreme Court in Avara's case (supra), which can be gainfully followed in the present case, read as under:-

*"an appeal is a continuation of the suit
where a decree for specific performance has been*

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dismissed by the trial court, but decreed by the appellate Court, it should be construed to be in the same suit. When the decree specifies the time for performance of the conditions of the decree, on its failure to deposit the money, Section 28 (1) itself gives power to the Court to extend the time on such terms as the Court may allow to pay the purchase money or other sum which the Court has ordered him to pay. An application for extension of time for payment of balance consideration may be filed even in the Court of first instance or in the appellate court in the same suit as the decree of the trial court stands merged with that of the appellate Court which decree is under execution. It is to be seen that the procedure is the hand-maid for justice and unless the procedure touches upon jurisdictional issue, it should be moulded to subserve substantial justice.”

Once the decree holder remained successful up to the Hon’ble Supreme Court, genuine claim of the decree holder could not have been defeated at the hands of executing court or any other court only on technicalities. As noticed hereinabove, neither learned trial court, nor learned first appellate court as well as this Court issued any time bound direction to the decree holder to deposit the balance sale consideration before executing court at the time of filing his execution petition. Further, it goes without saying that plaintiff, being the decree holder, was not going to gain anything either in delaying the matter or not depositing the balance sale consideration at the appropriate time.

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The fact that decree holder was pursuing his execution petition, alone would be sufficient to hold that he was ready and willing to deposit the balance sale consideration. It was only the judgment debtor-petitioner, who was trying to defeat the genuine claim of the decree holder on one or the other pretext, while delaying the matter including by way of filing baseless objections in the execution petition. Since learned executing court has considered all the relevant aspects of the matter, while passing the impugned order, it has not been found suffering from any patent illegality or perversity and the same deserves to be upheld, for this reason also.

No other argument was raised

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present revision petition is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant revision petition stands dismissed, however, with no order as to costs.

30.1.2017
AK Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned Yes/No
Whether reportable: Yes/No